IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 1737 of 2007()

AGAINST THE ORDER DATED 18/05/2007 IN CMP 2694/07 IN ST.881/2005 of J.F.M.C.MARAD CASES, KOZHIKODE

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PETITIONER:

PILAKKAT SHANTHA,
D/O.KRISHNAN NAIR,
AGED 50 YEARS, HOUSEWIFE,
KACHERI AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

2. M.GOPINATHAN S/O.KRISHNAN,
AGED 45, 'GAYATHRI NIVAS',
NADUVATTOM AMSOM, DESOM,
KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1737 of 2007

Dated this the 30th day of May 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. He has taken up a defence that the prosecution is barred by limitation and that the notice of demand was actually received on 01/03/2005 whereas the acknowledgment card at present shows that it was delivered on 07/03/2005. Trial is almost complete. At the fag end, the petitioner wanted the acknowledgment card to be sent to the expert. The learned Magistrate, by the impugned order, rejected the prayer and the petitioner claims to be aggrieved by such rejection.

2. The learned Magistrate took the view that it is very evident from the acknowledgment card that there is alteration and to prove that there is alteration, it is not necessary to send the acknowledgment card to an expert. The learned Magistrate took note of the fact that the prayer is not to send the cheque to the expert to ascertain the author of the correction but only to

ascertain that there was an alteration/correction. In as much as that fact is very evident on a perusal of the acknowledgment card itself, the learned Magistrate was not persuaded to invoke the discretion under Section 254(2) Cr.P.C in favour of the petitioner.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to exercise. The jurisdiction sought to be invoked is the extraordinary inherent jurisdiction. Such jurisdiction is to be invoked only in exceptional cases and not as a matter of course. Only in the interests of justice can such jurisdiction be invoked. The law frowns upon attempts to challenge interlocutory orders which inevitably contribute to protraction of the trial. This policy of the law is clearly evident from the embargo against revisional challenge of interlocutory orders under Section 397(2) Cr.P.C But that is not to say that in an exceptional case to secure the interests of justice and to prevent miscarriage of justice, this court cannot invoke the powers under Section 482 Cr.P.C to interfere even with an interlocutory order.

3. But is the instant case, one such case where such

jurisdiction has to be invoked? I find the reasons given by the learned Magistrate to be cogent and reasonable and not at any rate warranting interference by invoking the jurisdiction under Section 482 Cr.P.C.

4. This Criminal Miscellaneous Case is, in these circumstances, dismissed but I may hasten to observe that both party shall be entitled to advance their arguments to assail/explain the alleged correction/alteration in the acknowledgment card before the learned Magistrate. Nay, even the right of the petitioner to challenge the impugned order if necessary along with the final order to be passed in the prosecution shall remain unfettered by this dismissed.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007